

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

In re patent application of:
Aurrichio et al.

Atty. Docket No.: YOR920010210US1

Serial No.: 09/918,107

Group Art Unit: 2781

Filed: July 25, 2002

Examiner: Choi, Peter H.

For: PERFORMANCE INDICATOR AND NOTIFICATION SYSTEM

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANTS' APPEAL BRIEF

Sirs:

Appellant respectfully appeals the final rejection of claims 1-15, 17-26, 28-34, 26-52, and 54-55, in the Office Action dated April 11, 2007. A Notice of Appeal and Pre-Appeal Brief Request for Review was timely filed on July 11, 2007. A decision on the Pre-Appeal Brief Request was mailed on August 23, 2007 setting a one-month response period. Therefore, this Appeal Brief is timely filed.

Appeal Brief

I. REAL PARTY IN INTEREST

The real party in interest is International Business Machines Corporation, Armonk, New York, assignee of 100% interest of the above-referenced patent application.

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellants, Appellants' legal representative or Assignee which would directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

Claims 1-15, 17-26, 28-34, 36-52, and 54-55 are all the claims pending in the application. Claims 1-6, 9-13, 15-17, 19-24, 28-32, 34, 36, 38-43, 46-50, 52, and 54 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Beldock (U.S. Patent No. 6,490,565). Claims 7, 18, 25, 37, 44, and 55 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Beldock, in view of Petke, et al. (U.S. Patent No. 6,163,732), hereinafter referred to as Petke. Claims 8, 26, and 45 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Beldock, in view of Barrett, et al. (U.S. Patent No. 6,029,144), hereinafter referred to as Barrett. Claims 14, 33, and 51 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Beldock, in view of Smalley, et al. (U.S. Patent No. 6,067,549), hereinafter referred to as Smalley.

IV. STATUS OF AMENDMENTS

In response to the Office Action mailed April 11, 2007 (hereinafter referred to as the "Office Action"), an after-final Response that made no claim amendments was filed on May 15, 2007. An Advisory Action dated May 24, 2007 indicated that, upon filing an appeal, the Response filed on May 15, 2007 did not place the application in condition for allowance, and that the rejections of claims would remain. The claims shown in the appendix are shown in their amended form as of the January 10, 2007 Amendment.

V. SUMMARY OF CLAIMED SUBJECT MATTER

One feature of the invention is a method for monitoring environmental performance information and providing notification when said performance information indicates performance reaching a predetermined level. Claim 1 defines this feature as follows: "a method for monitoring environmental performance information and providing notification when said performance information indicates performance reaching a predetermined level." This feature is described at various points in the specification, for example paragraph [0010] describes this feature as follows: "A Performance Indicator and Notification System (PINS) is included in the system to (1) establish performance criteria in a consistent and predetermined manner, and (2) to notify corporate staff and other environmental professionals regarding nonconformance to established performance criteria, as well as flagging these non-conformities in the system databases." This is shown in Figure 1.

Appeal Brief

Another feature of the invention is setting performance criteria to capture performance information at specific times by a predetermined schedule in a system, wherein the performance criteria is set at one of a global, a regional, and a site-specific level. Claim 1 defines this feature as follows: "setting performance criteria to capture performance information at specific times by a predetermined schedule in a system, wherein said performance criteria is set at one of a global, a regional, and a site-specific level." This feature is described at various points in the specification, for example paragraph [0018] describes this feature as follows: "performance data criteria may be set at a global, regional or site level. This flexible system for setting performance levels allows for site-specific criteria to be set for a facility while corporate-wide criteria to be set for goals affecting all or some locations." This is shown in Figure 1.

Another feature of the invention is accepting a plurality of forms from a plurality of sites at specific times by the predetermined schedule, each of the forms including instructions, definitions and the performance information according to uniform data definitions. Claim 1 defines this feature as follows: "accepting a plurality of forms from a plurality of sites at specific times by said predetermined schedule, each of said forms including instructions, definitions and said performance information according to uniform data definitions." This feature is described at various points in the specification, for example paragraph [0009] describes this feature as follows: "provided with pre-planned reporting requirements that require reporting of specific information at specific times by a predetermined schedule to ensure capturing of key performance indicators and

Appeal Brief

consistency in data reporting by operating as a global application requiring the same data from all reporting locations using the same definitions." This is shown in Figure 1.

Another feature of the invention is storing the performance information in a database according to an area of interest of the performance information. Claim 1 defines this feature as follows: "storing said performance information in a database according to an area of interest of said performance information." This feature is described at various points in the specification, for example paragraph [0011] describes this feature as follows: "The tool is operably connected to a number of databases 12, each one housing information for a distinct area of interest." This is shown in Figure 1.

Another feature of the invention is monitoring the performance information for conformance with the performance criteria currently stored. Claim 1 defines this feature as follows: "monitoring said performance information for conformance with said performance criteria currently stored." This feature is described at various points in the specification, for example paragraph [0010] describes this feature as follows: "to notify corporate staff and other environmental professionals regarding nonconformance to established performance criteria." This is shown in Figure 1.

Another feature of the invention is flagging the performance information that does not conform with the performance criteria and generating a report one of automatically and manually according to at least a portion of said performance information currently stored. Claim 1 defines this feature as follows: "flagging said performance information that does not conform with said performance criteria and generating a report one of automatically and manually according to at least a portion of said performance

Appeal Brief

information currently stored." This feature is described at various points in the specification, for example paragraph [0019] describes this feature as follows: "the application compares the submitted data against the predetermined criteria at a pre-established review period (e.g., monthly, quarterly) and automatically generates a nonconformance report in accordance to the database design. Moreover, a software agent would be created to allow manual generation of a report. ." This is shown in Figure 1.

Another feature of the invention is providing notification when the performance information deviates from the performance criteria. Claim 1 defines this feature as follows: "providing notification when said performance information deviates from said performance criteria." This feature is described at various points in the specification, for example paragraph [0010] describes this feature as follows: "the PINS provides a mechanism for assessing environmental performance on a real-time basis and allowing immediate notification to corporate staff or other environmental professionals when performance data deviates from the established criteria." This is shown in Figure 1.

Another feature of the invention is modifying the performance so that the performance conforms with the performance criteria. Claim 1 defines this feature as follows: "modifying said performance so that said performance conforms with said performance criteria." This feature is described at various points in the specification, for example paragraph [0014] describes this feature as follows: "there are three levels: reader, author and editor. A reader is limited to viewing documents, which are completed forms, only. An author can view documents, create documents, and modify the

Appeal Brief

documents he or she created. An editor can read, create and modify all documents." This is shown in Figure 1.

Another feature of the invention is that the modifying the performance is conducted immediately subsequent to the providing notification when the performance information deviates from the performance criteria so that the modifying of the performance occurs in real time. Claim 1 defines this feature as follows: "wherein said modifying said performance is conducted immediately subsequent to said providing notification when said performance information deviates from said performance criteria so that said modifying of said performance occurs in real time." This feature is described at various points in the specification, for example paragraph [0010] describes this feature as follows: "the PINS provides a mechanism for assessing environmental performance on a real-time basis and allowing immediate notification to corporate staff or other environmental professionals when performance data deviates from the established criteria." This is shown in Figure 1.

Another feature of the invention is automatically creating an audit trail to the forms, wherein the audit trail comprises: a name of an author; a creation date; a name of a modifying user; and, a date of modification. Claim 1 defines this feature as follows: "automatically creating an audit trail to said forms, wherein said audit trail comprises: a name of an author; a creation date; a name of a modifying user; and, a date of modification." This feature is described at various points in the specification, for example paragraph [0014] describes this feature as follows: "As an added security feature, an audit trail is automatically created for each document. At the creation of a

Appeal Brief

document, it is stamped with the name of the author and the creation date. Each time the document is modified, the name of the user that made the modification and the date of the edit are added to the audit trail." This is shown in Figure 1.

Another feature of the invention is a system for monitoring environmental performance information. Claim 19 defines this feature as follows: "a system for monitoring environmental performance information." This feature is described at various points in the specification, for example paragraph [0021] describes this feature as follows: "PINS provides real-time analysis of performance data, as opposed to a retrospective view on performance passed the elapsed measurement period so that comprehensive company-wide monitoring of performance is accomplished in a manner such that data entered in a single site is accessible, in real-time, at other sites to perform thresholding on limits set at multiple sites, all sites, or just the local site." This is shown in Figure 1.

Another feature of the invention is a processor. Claim 19 defines this feature as follows: "a processor." This feature is described at various points in the specification, for example paragraph [0021] describes this feature as follows: "PINS makes the entire process of performance tracking against criteria systematic, timely and efficient; and turns lagging indicators into leading indicators by way of providing real-time performance feedback." This is shown in Figure 1.

Another feature of the invention is a data storage device operably connected to the processor, the data storage device further comprising a number of individual storage units for storing a predetermined type of data. Claim 19 defines this feature as follows: "a data

Appeal Brief

storage device operably connected to the processor, said data storage device further comprising a number of individual storage units for storing a predetermined type of data." This feature is described at various points in the specification, for example paragraph [0011] describes this feature as follows: "The tool is operably connected to a number of databases 12, each one housing information for a distinct area of interest." This is shown in Figure 1.

Another feature of the invention is a program executable by the processor. Claim 19 defines this feature as follows: "a program executable by the processor." This feature is described at various points in the specification, for example paragraph [0009] describes this feature as follows: "An information collection and management system, referred to as the Environmental Master Plan, or EMP, is provided with pre-planned reporting requirements that require reporting of specific information at specific times by a predetermined schedule to ensure capturing of key performance indicators and consistency in data reporting by operating as a global application requiring the same data from all reporting locations using the same definitions." This is shown in Figure 1.

Another feature of the invention is accept a plurality of forms from a plurality of sites at specific times by the predetermined schedule, each of the forms including instructions, definitions and performance information according to uniform data definitions. Claim 19 defines this feature as follows: "accept a plurality of forms from a plurality of sites at specific times by said predetermined schedule, each of said forms including instructions, definitions and performance information according to uniform data definitions." This feature is described at various points in the specification, for

Appeal Brief

example paragraph [0009] describes this feature as follows: "An information collection and management system, referred to as the Environmental Master Plan, or EMP, is provided with pre-planned reporting requirements that require reporting of specific information at specific times by a predetermined schedule to ensure capturing of key performance indicators and consistency in data reporting by operating as a global application requiring the same data from all reporting locations using the same definitions." This is shown in Figure 1.

Another feature of the invention is store the performance information in a database according to an area of interest of the performance information. Claim 19 defines this feature as follows: "store said performance information in a database according to an area of interest of said performance information." This feature is described at various points in the specification, for example paragraph [0011] describes this feature as follows: "The tool is operably connected to a number of databases 12, each one housing information for a distinct area of interest." This is shown in Figure 1.

Another feature of the invention is monitor the performance information at the specific times by the predetermined schedule currently stored for conformance against pre-established performance criteria, wherein the performance criteria is set at one of a global, a regional, and a site-specific level. Claim 19 defines this feature as follows: "monitor said performance information at said specific times by said predetermined schedule currently stored for conformance against pre-established performance criteria, wherein said performance criteria is set at one of a global, a regional, and a site-specific level." This feature is described at various points in the specification, for example

Appeal Brief

paragraph [0018] describes this feature as follows: " In this way, performance data criteria may be set at a global, regional or site level. This flexible system for setting performance levels allows for site-specific criteria to be set for a facility while corporate-wide criteria to be set for goals affecting all or some locations." This is shown in Figure 1.

Another feature of the invention is flag the performance information that does not conform with the performance criteria and generate a report one of automatically and manually according to at least a portion of the performance information in currently stored databases. Claim 19 defines this feature as follows: "flag said performance information that does not conform with said performance criteria and generate a report one of automatically and manually according to at least a portion of said performance information in currently stored databases." This feature is described at various points in the specification, for example paragraph [0016] describes this feature as follows: "performance is monitored in real-time and notification is provided substantially concurrently for sub-par performance. Additionally, reports generated by the system reflect all the stored information at the time the report is generated. This allows any site with sub-par performance to learn the impact of an individual location on overall company performance." This is shown in Figure 1.

Another feature of the invention is provide notification when the performance information deviates from the performance criteria. Claim 19 defines this feature as follows: "provide notification when said performance information deviates from said performance criteria." This feature is described at various points in the specification, for

Appeal Brief

example paragraph [0010] describes this feature as follows: "the PINS provides a mechanism for assessing environmental performance on a real-time basis and allowing immediate notification to corporate staff or other environmental professionals when performance data deviates from the established criteria." This is shown in Figure 1.

Another feature of the invention is modify the performance so that the performance conforms with the performance criteria. Claim 19 defines this feature as follows: "modify said performance so that said performance conforms with said performance criteria." This feature is described at various points in the specification, for example paragraph [0014] describes this feature as follows: "In a preferred embodiment, there are three levels: reader, author and editor. A reader is limited to viewing documents, which are completed forms, only. An author can view documents, create documents, and modify the documents he or she created." This is shown in Figure 1.

Another feature of the invention is that modifying of the performance is conducted immediately subsequent to providing of the notification when the performance information deviates from the performance criteria so that the modifying of the performance occurs in real time. Claim 19 defines this feature as follows: "wherein modifying of said performance is conducted immediately subsequent to providing of said notification when said performance information deviates from said performance criteria so that said modifying of said performance occurs in real time." This feature is described at various points in the specification, for example paragraph [0010] describes this feature as follows: "the PINS provides a mechanism for assessing environmental performance on a real-time basis and allowing immediate notification to corporate staff or other

Appeal Brief

environmental professionals when performance data deviates from the established criteria." This is shown in Figure 1.

Another feature of the invention is an automatically created audit trail for the forms, the audit trail comprising: a name of an author; a creation date; a name of a modifying user; and, a date of modification. Claim 19 defines this feature as follows: "an automatically created audit trail for said forms, said audit trail comprising: a name of an author; a creation date; a name of a modifying user; and, a date of modification." This feature is described at various points in the specification, for example paragraph [0014] describes this feature as follows: "An editor can read, create and modify all documents. As an added security feature, an audit trail is automatically created for each document. At the creation of a document, it is stamped with the name of the author and the creation date. Each time the document is modified, the name of the user that made the modification and the date of the edit are added to the audit trail." This is shown in Figure 1.

Another feature of the invention is computer executable process steps operative to control a computer, stored on a computer readable medium, for monitoring environmental performance information. Claim 38 defines this feature as follows: "Computer executable process steps operative to control a computer, stored on a computer readable medium, for monitoring environmental performance information." This feature is described at various points in the specification, for example paragraph [0021] describes this feature as follows: "PINS provides real-time analysis of performance data, as opposed to a retrospective view on performance passed the elapsed

Appeal Brief

measurement period so that comprehensive company-wide monitoring of performance is accomplished in a manner such that data entered in a single site is accessible, in real-time, at other sites to perform thresholding on limits set at multiple sites, all sites, or just the local site. PINS makes the entire process of performance tracking against criteria systematic, timely and efficient; and turns lagging indicators into leading indicators by way of providing real-time performance feedback. Further, PINS allows for effective comparisons of present environmental performance data with proposed regulation." This is shown in Figure 1.

Another feature of the invention is accepting a plurality of forms from a plurality of sites at specific times by a predetermined schedule, each of the forms including instructions, definitions and performance information according to uniform data definitions. Claim 38 defines this feature as follows: "accepting a plurality of forms from a plurality of sites at specific times by a predetermined schedule, each of said forms including instructions, definitions and performance information according to uniform data definitions." This feature is described at various points in the specification, for example paragraph [0013] describes this feature as follows: "Instructions and definitions used in completing the form are provided as part of the system so that those completing the forms know exactly what is required, eliminating any guesswork on their part, and those using the information reported in the forms understand it in the correct context." This is shown in Figure 1.

Another feature of the invention is storing the performance information in a database according to an area of interest of the performance information. Claim 38

Appeal Brief

defines this feature as follows: "storing said performance information in a database according to an area of interest of said performance information." This feature is described at various points in the specification, for example paragraph [0011] describes this feature as follows: "The tool is operably connected to a number of databases 12, each one housing information for a distinct area of interest." This is shown in Figure 1.

Another feature of the invention is monitoring the performance information at the specific times by the predetermined schedule currently stored for conformance against pre-established performance criteria, wherein the performance criteria is set at one of a global, a regional, and a site-specific level. Claim 38 defines this feature as follows: "monitoring said performance information at said specific times by said predetermined schedule currently stored for conformance against pre-established performance criteria, wherein said performance criteria is set at one of a global, a regional, and a site-specific level." This feature is described at various points in the specification, for example paragraph [0019] describes this feature as follows: "Performance Indicator Report -- the application compares the submitted data against the predetermined criteria at a pre-established review period (e.g., monthly, quarterly) and automatically generates a nonconformance report in accordance to the database design." This is shown in Figure 1.

Another feature of the invention is flagging the performance information that does not conform with the performance criteria and generating a report one of automatically and manually according to at least a portion of the performance information in the plurality of databases. Claim 38 defines this feature as follows: "flagging said performance information that does not conform with said performance criteria and

Appeal Brief

generating a report one of automatically and manually according to at least a portion of said performance information in said plurality of databases." This feature is described at various points in the specification, for example paragraph [0019] describes this feature as follows: "Performance Indicator Report -- the application compares the submitted data against the predetermined criteria at a pre-established review period (e.g., monthly, quarterly) and automatically generates a nonconformance report in accordance to the database design. Moreover, a software agent would be created to allow manual generation of a report. Under this scheme, an authorized user can activate the agent as required to manually generate desired reports." This is shown in Figure 1.

Another feature of the invention is providing notification when the performance information deviates from the performance criteria. Claim 38 defines this feature as follows: "providing notification when the performance information deviates from the performance criteria." This feature is described at various points in the specification, for example paragraph [0010] describes this feature as follows: "In effect, the PINS provides a mechanism for assessing environmental performance on a real-time basis and allowing immediate notification to corporate staff or other environmental professionals when performance data deviates from the established criteria." This is shown in Figure 1.

Another feature of the invention is modifying the performance so that the performance conforms with the performance criteria. Claim 38 defines this feature as follows: "modifying said performance so that said performance conforms with said performance criteria." This feature is described at various points in the specification, for example paragraph [0014] describes this feature as follows: "An author can view

Appeal Brief

documents, create documents, and modify the documents he or she created. An editor can read, create and modify all documents." This is shown in Figure 1.

Another feature of the invention is that the modifying the performance is conducted immediately subsequent to the providing notification when the performance information deviates from the performance criteria so that the modifying of the performance occurs in real time. Claim 38 defines this feature as follows: "wherein said modifying said performance is conducted immediately subsequent to said providing notification when said performance information deviates from said performance criteria so that said modifying of said performance occurs in real time." This feature is described at various points in the specification, for example paragraph [0016] describes this feature as follows: "performance is monitored in real-time and notification is provided substantially concurrently for sub-par performance. Additionally, reports generated by the system reflect all the stored information at the time the report is generated." This is shown in Figure 1.

Another feature of the invention is automatically creating an audit trail to the forms, wherein the audit trail comprises: a name of an author; a creation date; a name of a modifying user; and, a date of modification. Claim 38 defines this feature as follows: "automatically creating an audit trail to said forms, wherein said audit trail comprises: a name of an author; a creation date; a name of a modifying user; and, a date of modification." This feature is described at various points in the specification, for example paragraph [0014] describes this feature as follows: "an audit trail is automatically created for each document. At the creation of a document, it is stamped

Appeal Brief

with the name of the author and the creation date. Each time the document is modified, the name of the user that made the modification and the date of the edit are added to the audit trail." This is shown in Figure 1.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The issues presented for review is weather claims 1-6, 9-13, 15-17, 19-24, 28-32, 34, 36, 38-43, 46-50, 52, and 54 are unpatentable under 35 U.S.C. §103(a) by Beldock, weather claims 7, 18, 25, 37, 44, and 55 are unpatentable under 35 U.S.C. §103(a) by Beldock, in view of Petke, weather claims 8, 26, and 45 are unpatentable under 35 U.S.C. §103(a) by Beldock, in view of Barrett, and weather claims 14, 33, and 51 are unpatentable under 35 U.S.C. §103(a) by Beldock, in view of Smalley.

VII. ARGUMENT

A. The Rejection Based on Beldock

1. The Position in the Office Action

The Office Action states:

Challenging Official Notice

3. There are minimum requirements for a challenge to Official Notice:

(a) In general, a challenge, to be proper, must contain adequate information or arguments so that on its face it creates a reasonable doubt regarding the circumstances justifying the Official Notice

Appeal Brief

(b) Applicants must seasonably traverse (challenge) the taking of Official Notice as soon as practicable, meaning the next response following an Office Action. If an applicant fails to seasonably traverse the Official Notice during examination, his right to challenge the Official Notice is waived.

Applicant has not provided adequate information or arguments so that on its face it creates a reasonable doubt regarding the circumstances justifying the Official Notice.

Therefore, the presentation of a reference to substantiate the Official Notice is not deemed necessary. The Examiner's taking of Official Notice has been maintained.

Bald statements such as, "the Examiner has not provided proof that this element is well known" or "applicant disagrees with the Examiner's taking of Official Notice and hereby requests evidence in support thereof", are not adequate and do not shift the burden to the Examiner to provide evidence in support of the Official Notice.

In the previous Office Action mailed February 27, 2006, notice was taken by the Examiner that certain subject matter is old and well known in the art. Per MPEP 2144.03(c), these statements are taken as admitted prior art because no traversal of this statement was made in the subsequent response. Specifically, it has been taken as prior art that:

It is old and well known in the art to include instructions and definitions along with performance information

It is old and well known in the art that forms are used in transmitting data (such as Electronic Data Interchange, survey results, questionnaires, facsimile, e-mail, etc.)

Real time updating is old and well known in the art

Appeal Brief

It is old and well known in the business arts that an organization can comprise a single site, or multiple sites

Distributing notification memos or documents using e-mail, telephone, facsimile, pager, or postal mail is old and well-known practice

It is old and well known in the art to employ a ratio (such as a cost: savings, cost: benefit ratio) or similar means of comparison to express the advantages of using new technologies, equipment, policies, etc. and are used to evaluate efficiency of resources

Access control privileges are established by a system administrator and users are granted different privileges that reflect their standing within the organization

It is old and well known in the computing arts that computer operating systems use Master File Tables to store resident attributes for each computer file,

including the filename, data, times of creation/modification or access and the user who last created/modified/accessed said file

It is old and well known in the computing arts to create audit trails of data usage within the system, especially within databases

Querying and querying languages (such as Structured Query Language {SQL}) are old and well known in the computing and database arts

It is old and well known in the computing arts and database arts that database queries select records from one or more tables in a database according to a set of input parameters so that they can be viewed, stored, analyzed, on a common datasheet

Appeal Brief

Compliance data needs to be~ updated to reflect changes in federal, state, and local laws and regulations, program requirements of federal and state-funded programs, and industry standards (such as ISO certification, Quality Control Initiatives, etc.), as well as self-imposed rules and regulations

Response to Arguments

4. Applicant's arguments with respect to claims 1, 19, and 38 filed January 10, 2007 have been considered but are moot in view of the new ground(s) of rejection.

Applicant argues that Beldock fails to teach modifying performance in real time.

Applicant argues that Beldock fails to teach or suggest that the performance criteria may be set at a global, regional, or site-specific level.

Applicant argues that Beldock fails to teach or suggest automatically creating an audit trail to the forms.

However, the Applicant's arguments are directed towards limitations taught by Official Notice, which was admitted as prior art as a result of untimely and or improper challenge.

Applicant has again attempted to traverse the Official Notice set forth by the Examiner in the Office Action mailed February 27, 2006. As explained above, there are minimum requirements for a challenge to Official Notice:

(a) In general, a challenge, to be proper, must contain adequate information or arguments so that on its face it creates a reasonable doubt regarding the circumstances justifying the Official Notice

Appeal Brief

(b) Applicants must seasonably traverse (challenge) the taking of Official Notice as soon as practicable, meaning the next response following an Office Action. If an applicant fails to seasonably traverse the Official Notice during examination, his right to challenge the Official Notice is waived.

Applicant has not provided adequate information or arguments so that on its face it creates a reasonable doubt regarding the circumstances justifying the Official Notice. Therefore, the presentation of a reference to substantiate the Official Notice is not deemed necessary. The Examiner's taking of Official Notice has been maintained.

Bald statements such as, "the Examiner has not provided proof that this element is well known" or "applicant disagrees with the Examiner's taking of Official Notice and hereby requests evidence in support thereof", are not adequate and do not shift the burden to the Examiner to provide evidence in support of the Official Notice.

The Applicant has not properly or timely challenged the Examiner's taking of Official Notice; therefore, said takings of Official Notice have been admitted as prior art.

Claim Rejections 35 USC §103

5. The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary

Appeal Brief

skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 1-6, 9-13, 15, 17, 19-24, 28-32, 34, 36, 38-43, 46-50, 52, and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beldock (U.S Patent #6,490,565).

As per claim 1, Beldock teaches a method for monitoring environmental performance information (environmental certification program) and providing notification when said performance information indicates performance reaching a predetermined level, the method comprising the steps of:

(a) setting performance criteria (program defines the criteria which must be met by a participating the program in order to be in compliance) to capture performance information (compliance with predefined program criteria, including energy efficiency, use of renewable energy, recycling, waste minimization, health and safety, reduction of environmental liabilities, and corporate citizenship) at specific times by a predetermined schedule (participant is approved for certification at 18, preferably within two months of 'year 0'; compliance certification is performed every year (a plurality of compliance requirements for year 1, year 2, year 3, year 4, year 6, year 8 and every two years thereafter are disclosed) in a system [Column 3, lines 28-34, Column 4, lines 45-46, Column 4, line 54— Column 5, line 31, Column 5, lines 55-63; Claim IA];

(c) storing said performance information in a database (compliance data is entered at 16 into database 12) as a according to an area of interest of said performance information (the compliance criteria is based on profitable environmental measures, or PEMs, which

Appeal Brief

are directed to areas of interest such as energy efficiency, the use of renewable energy, recycling, waste minimization, health and safety, reduction of environmental liabilities, and corporate citizenship) [Column 3, lines 30-38, 56-57, Column 4, lines 41-43, Column 5, lines 55- 57, Claims 1c, 15c];

(d) monitoring said performance information for conformance with said performance criteria as it is currently stored (evaluate and track the compliance of a participant; program defines the criteria which must be met by a participant in the program in order to be in compliance; the participant must implement (and maintain) a predefined number of additional PEMs at specified years after certification in order to maintain certification; (participant is evaluated at year 0, year 1, year 2, year 3, year 4, and year $(4+2n)$)) [Column 3, lines 28-30, 56-57, 60-65, Column 4, lines 7-9, Figure 3, Claims 1a, 15aJ];

(e) flagging said performance information that does not conform with said performance criteria (recording a non-compliance in the database) and generating a report one of automatically and manually according to at least a portion of said performance information currently stored (system outputs at 18 whether the participant is in compliance and therefore certified or outputs at 20 whether the participant is not in compliance and is therefore not certified) [Column 3, lines 56- 57, 60-66, Claims if, 15f];

(f) providing notification (system outputs at 18 whether the participant is in compliance and therefore certified or outputs at 20 whether the participant is not in compliance and is therefore not certified) when said performance information deviates from said performance criteria (identified profitable environmental measure are reported to the organizers of the environmental certification program and input into the database

Appeal Brief

12; participant reports its compliance (or non- compliance) with the program to the organizers of the program) [Column 3, lines 59-66, Column 4, lines 40-43, Column 5, lines 55-57

(g) modifying said performance so that said performance conforms with said performance criteria (participants are given a short period of time in which to correct any inadvertent defects in its compliance) [Column 6, lines 4-6]; and

(h) wherein said modifying said performance is conducted immediately subsequent to said providing notification when said performance information deviates from said performance criteria (the participant is apprised of its failure to comply with particular requirements, which are allowed to be remedied during the brief grace period) [Column 5, line 64 — Column 6, line 9].

Beldock does not explicitly teach:

(b) accepting a plurality of forms from a plurality of sites at specific times by said predetermined schedule, each of said forms including instructions, definitions and said performance information according to uniform data definitions.

However, Beldock collects performance information from a plurality of facilities to assess program compliance with predefined criteria based on a function of performance at a plurality of facilities (the program requires that 4 profitable environmental measures are presently implemented at least one facility, 4 profitable environmental measures are implemented in at least one facility, or a combination, and that said profitable environmental measures are implemented in 75% of all facilities within 3 years of initial certification in order to maintain certification) [Column 4, line 4-

Appeal Brief

Column 5, line 53]. The environmental certification program taught by Beldock also teaches the step of obtaining certification compliance data after assessment (at specific times) of each year's predetermined certification Conditions for compliance (as determined by a set of predetermined certification criteria for each year), as compliance data is entered into the database [Column 3, lines 59-60, Column 5, lines 55-63]. Furthermore, the Beldock system provides uniform criteria for participants in the program, as the terms of compliance are the same for all participants [Column 2, lines 42, 59-60], thus the performance information is a function of uniform data definitions (compliance criteria).

It has been admitted as prior art, as a result of untimely and/or improperly challenged Official Notice, that it is old and well known in the art to include instructions and definitions along with performance information. Beldock teaches an environmental certification program that defines a plurality of predefined criteria which must be met by a participant in the program [Column 2, lines 10-13]; therefore, instructions and definitions would enable the user to correctly interpret data and compliance according to said predefined criteria. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the teachings of Beldock to accept instructions and definitions along with performance information, because doing so would allow Beldock to understand and interpret the performance information, and would further provide the user with further instructions for usage of the performance information.

While Beldock teaches the step of collecting performance information data from a plurality of sites, Beldock is silent regarding the use of forms.

Appeal Brief

However, a form is merely a document with blank spaces for insertion of required or requested information, which are usually transferred to a computer database for storage and subsequent analysis. Beldock teaches the step of entering compliance data into the database, which included the step of creating or filling out a document with the required/requested compliance information, thus implying the use of forms in the Beldock system.

Furthermore, it has been admitted as prior art, as a result of untimely and/or improperly challenged Official Notice, that forms are used in transmitting data (such as Electronic Data Interchange, survey results, questionnaires, facsimile, e-mail, etc.). Beldock tracks the compliance of a participant in the environmental certification program and also conducts on-site verification of compliance [Column 2, lines 21-23, Column 3, lines 55-57]; thus, using forms to enter data would provide a uniform data set for each participant, easing the burden of data processing and further enabling utilization of the Beldock system on a global scale. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the teachings of Beldock to use forms to transmit performance information, because the resulting combination would enable the use of data transfer means such as Electronic Data Interchange, and standardize the presentation of data on said forms (to include pre-filled data such as company name, address, etc.), which would enable the automated processing of information on the forms and automates the process of providing access to' information, facilitating the sharing of information with downstream processes (such as manufacturing, marketing, purchasing, and sales).

Appeal Brief

Beldock does not explicitly teach said modifying of said performance occurring in real time. However, Official Notice is taken that real-time updating is old and well known in the art. Beldock teaches that participants are given a short period of time in which to correct any inadvertent defects in its compliance [Column 5, line 65 – Column 6, line 19]; thus, modifying performance in real time would facilitate the changes needed to correct all aspects in which the participant is in non-compliance, thereby making the participant eligible to use the certification mark again. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the teachings of Beldock to modify performance in real time, because doing so would allow participants to continuously monitor performance and implement corrective measures in order to be in compliance with predefined criteria and retain eligibility to display said certification mark. The eligibility to display certification marks and be in compliance with predefined criteria has been identified by Beldock as being beneficial and a goal of participants, as Beldock explains that companies vie for environmental awards given by the government for the prestige associated with such awards, perceived economic value, and public awareness and that the certification mark provided by the program has discernable value in the marketplace, signifying the participant's dedication to environmental concerns and the willingness to be a model environmental citizen. [Column 1, lines 32-52].

Beldock provides uniform criteria for participants in the certification program in the event that no specific evaluation criteria is designated for use. Beldock does not explicitly teach that performance criteria is set at one of a global, a regional, and a site-

Appeal Brief

specific level. However, it has been admitted as prior art, as a result of untimely and/or improperly challenged Official Notice, that it is old and well known in the art to for compliance data to be updated to reflect changes in federal, state, and local laws and regulations, program requirements of federal, and state-funded programs, and industry standards (such as ISO certification, Quality Control Initiatives, etc.), as well as self-imposed rules and regulations. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the teachings of Beldock to include global, regional, and site-specific levels of performance criteria, because doing so provides Beldock the flexibility to tailor the evaluation to local circumstances, further providing the environmental certification method of Beldock more credibility and can be practically implemented on a local, regional, or global level, thereby expanding the use of the Beldock system.

Beldock does not explicitly teach:

- (i) automatically creating an audit trail to said forms, wherein said audit trail comprises: a name of an author, a creation date, a name of a modifying user, and a date of modification

However, it has been admitted as prior art, as a result of untimely and/or improperly challenged Official Notice, that it is old and well known in the computing arts that computer operating systems use Master File Tables to store resident attributes for each computer file, including the filename, data, times of creation/modification or access and the user who last created/modified/accessed said file.'

Appeal Brief

Beldock stores data in a database; thus, using Master File Tables would provide means of tracking activity by users to track the integrity of data using audit trails. Furthermore, it has been admitted as prior art, as a result of untimely and/or improperly challenged Official Notice, that it is old and well known in the computing arts to create audit trails of data usage within the system, especially within databases. Audit trail techniques contribute to data integrity because it is desirable to have a past record of events where the sequence of events can be traced. Audit trails are helpful in investigations to verify the status of something or to determine where or when unauthorized activities took place. Sometimes, those who are authorized to access data abuse that right by using it for unauthorized purposes. Audit trails make it possible to discover the offender. The audit trail can be closely monitored for any unusual activity. An audit trail is a chronological record of events that occurred in the system, and enables users to retrace the steps through the system and reconstruct the sequence of events that occurred. Audit trails store information that attribute files to an author (or modifying user) and timestamp said file (upon creation and modification).

Furthermore, it was known at the time of the invention that merely providing an automated way to replace a well-known activity which accomplishes the same result is not sufficient to distinguish over the prior art. In re Venner, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958). Furthermore, it is well settled that it is not “invention” to broadly provide a mechanical or automatic means to replace manual activity which has accomplished the same result. In re Venner, 120 USPQ 192.

Appeal Brief

Thus, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the teachings of Beldock to implement audit trail measures known in the art in order to obtain the additional benefits of providing a historical record of events that enable users to determine the abusive actions and identifies of (authorized and unauthorized) users, as described above, providing a sense of accountability and responsibility amongst users.

As per claims 2-5, Beldock teaches monitoring the currently stored performance information of a specific set of sites for conformance with site-specific performance criteria (additional profitable environmental measures must be implemented in one of the organization's facilities in order to maintain the privilege of using the certification mark (indicating compliance with the criteria of the program)) [Column 4, lines 55-57].

It has been admitted as prior art, as a result of untimely and/or improperly challenged Official Notice, that an organization can comprise a single site, or multiple sites. Beldock conducts on-site verification of participant certification; thus, the application of Beldock on a plurality of sites belonging to a single participant would expand the certification abilities of Beldock to include participants with multiple facilities. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to practice the teachings of Beldock over a single site or a plurality of sites, because doing so would expand its ability to comprehensively evaluate compliance by applicants located in multiple sites.

As per claim 6, Beldock does not explicitly teach said step of providing notification further comprises sending notification via one or more of:

Appeal Brief

e-mail;

telephone;

facsimile;

pager; and

postal mail.

However, it has been admitted as prior art, as a result of untimely and/or improperly challenged Official Notice, that distributing notification memos or documents using e-mail, telephone, facsimile, pager, or postal mail is old and well-known practice. Beldock reports participant's compliance with the program for input into a database [Column 5, lines 55-57]; thus, the Examiner asserts that one of ordinary skill in the art would employ well known communication means to transmit said reports. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to employ said old and well-known means because doing so would allow Beldock to conveniently and quickly (quicker than traditional (mail) delivery means) distribute notification in user-friendly formats to necessary, globally dispersed recipients.

As per claim 9, Beldock teaches the method of claim 1, wherein said areas of interest include one or more of:

air (air pollution) [Figure 1d];

water (water contamination) [Figure 1d];

waste (recycling; waste minimization) [Figures 1b, 1c]; energy [Figures 1a, 1b];

toxic chemical release inventory;

containment (removal of radon, asbestos, lead) [Figure 1d]; regulatory activity;

Appeal Brief

cost and savings (use of energy efficient items, renewable energy, recycling, minimizing waste) [Figures 1a, 1b, 1c];

facility general information;

database meta information;

health and safety information [Figure 1c]; and

materials use and conservation information (use of energy efficient items, renewable energy, recycling, minimizing waste) [Figures 1a, 1b, 1c].

As per claim 10, Beldock teaches the method of claim I wherein said database is an Air Programs Database (air pollution) and the performance criteria is a high limit on emissions level (reducing site air pollution) [Figure 1d].

As per claim 11, Beldock teaches the method of claim I wherein said database is a Waste Management Database (Waste Minimization) and the performance criteria is a low limit on recycling quantities and percentage rates of nonhazardous waste (water conservation and water saving technologies, low-moisture landscaping, efficient material use, hazardous materials safety, energy efficient apparel, efficient equipment use, environmentally-friendly cleaning products) [Figure 1c].

As per claim 12, Beldock teaches the method of claim I wherein said database is an Energy Database (Energy Efficiency, and Use of Renewable Energy) and said performance criteria is a high limit on energy consumption (use of energy efficient lighting technology, commercial appliances, heating and air conditioning, water heating, commercial/industrial technologies and mechanical systems, commercial equipment,

Appeal Brief

windows, insulation, doors, office equipment, solar water heating, use of renewable technologies, alternatively fueled vehicles) [Figures 1a, 1b].

As per claim 13, Beldock does not explicitly teach that said database is a Cost and Savings Database and said performance criteria is a low limit on cost to savings ratio to ensure that economic efficiency does not fall below a predetermined level.

However, it has been admitted as prior art, as a result of untimely and/or improperly challenged Official Notice, to employ a ratio (such as a cost: savings, cost:

benefit ratio) or similar means of comparison to express the advantages of using new. technologies, equipment, policies, etc. and are used to evaluate efficiency of resources.

Beldock evaluates participants according to a plurality of predefined criteria that include a number of “profitable environmental measures” that are profitable to the participant [Column 2, lines 17-321; thus, using economic efficiency ratios, would provide an indicator of effective and cost-efficient measures. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the teachings of Beldock to track costs and savings data in a database to determine the efficiency and cost: benefit ratio of implementing various programs, technologies, and equipment to be used as a tool in assessing the effectiveness of such changes in company policy.

As per claim 15, Beldock does not explicitly teach assigning a specific access level to a user, wherein the access level further comprises:
reader;

Appeal Brief

author; and editor, wherein said reader is limited to viewing documents, author can view said documents, create said documents, and modify said documents created by said author, and the editor can read, create and modify all said documents.

However, it has been admitted as prior art, as a result of untimely and/or improperly challenged Official Notice, that access control privileges are established by a system administrator and that users are granted different privileges that reflect their standing within the organization. Access privileges based on authority levels would give a user permission to access any data classified at the user's clearance level or lower. Access permission based upon a need-to-know basis provides an additional degree of security. Document level security ensures that users are able to access (or create or modify) only the documents they are allowed to see (or modify). By storing user profiles, users are enabled to view documents they have permission to see without being challenged to specify their access credentials.

Beldock stores compliance data on a database; thus establishing user access levels and privileges would ensure that only authorized users are able to view documents, and only able to view documents to which they have authority to access. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the teachings of Beldock to implement data access control privilege measures known in the art in order to obtain the additional benefits of additional data security as described above.

As per claim 17, Beldock does not explicitly teach creating queries to summarize data and produce useful management information.

Appeal Brief

However, it has been admitted as prior art, as a result of untimely and/or improperly challenged Official Notice, that querying and querying languages (such as Structured Query Language (SQL)) are old and well known in the computing and database arts.

Beldock stores compliance data in a database; thus, the use of querying languages would enable users to search for specific data using search queries. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the teachings of Beldock to include the step of creating data queries, as the step of querying a database quickly retrieves useful and relevant data (instead of raw, unprocessed, and irrelevant data), which provide meaningful information on which decisions can be made.

As per claim 19, Beldock teaches a system for monitoring environmental performance (environmental certification program) information comprising:
a program executable by the processor to:
store the performance information in a database (compliance data into database 12) as a function of an area of interest (compliance data relates to a plurality of profitable environmental measures, each of which pertaining to a plurality of areas of interest such as energy efficiency, the use of renewable energy, recycling, waste minimization, health and safety, reduction of environmental liabilities, and corporate citizenship) of the performance information [Column 3, lines 31-38, 56-57, Column 4, lines 41-43, Column 5, lines 55-57, Claims 1c, 15c];
monitor said performance information at said specific times by said predetermined schedule currently stored for conformance against pre-established performance criteria

Appeal Brief

(evaluate and track the compliance of a participant; program defines the criteria which must be met by a participant in the program in order to be in compliance; the participant must implement (and maintain) a predefined number of additional PEMs at specified years after certification in order to maintain certification; (participant is evaluated at year 0, year 1, year 2, year 3, year 4, and year $(4+2n)$)) [Column 3, lines 28-30, 56-57, 60-65, Column 4, lines 7-9, Figure 3, Claims 1a, 15a] in a system;

flag said performance information that does not conform with said performance criteria (recording a non-compliance in the database) and generate a report one of automatically and manually according to at least a portion of said performance information currently stored (system outputs at 18 whether the participant is in compliance and therefore certified or outputs at 20 whether the participant is not in compliance and is therefore not certified) [Column 3, lines 56-57, 60-66, Claims 1f, 15i];

provide notification (system outputs at 18 whether the participant is in compliance and therefore certified or outputs at 20 whether the participant is not in compliance and is therefore not certified) when said performance information deviates from said performance criteria (identified profitable environmental measure are reported to the organizers of the environmental certification program and input into the database 12; participant reports its compliance (or non-compliance) with the program to the organizers of the program) [Column 3, lines 59-66, Column 4, lines 40-43, Column 5, lines 55-57]; modify said performance so that said performance conforms with said performance criteria (participants are given a short period of time in which to correct any inadvertent defects in its compliance) [Column 6, lines 4-6]; and

Appeal Brief

wherein said modifying said performance is conducted immediately subsequent to said providing notification when said performance information deviates from said performance criteria (the participant is apprised of its failure to comply with particular requirements, which are allowed to be remedied during the brief grace period) [Column 5, line 64— Column 6, line 9].

Beldock does not explicitly teach that performance criteria is set at one of a global, a regional, and a site-specific level. However, it has been admitted as prior art, as a result of untimely and/or improperly challenged Official Notice, that it is old and well known in the art to for compliance data to be updated to reflect changes in federal, state, and local laws and regulations, program requirements of federal and state-funded programs, and industry standards (such as ISO certification, Quality Control Initiatives, etc.), as well as self-imposed rules and regulations, thereby meeting the limitation of the claim.

Beldock does not explicitly teach:

(i) automatically creating an audit trail to said forms, wherein said audit trail comprises: a name of an author, a creation date, a name of a modifying user, and a date of modification

However, It has been admitted as prior art, as a result of untimely and/or improperly challenged Official Notice, that it is old and well known in the computing arts that computer operating systems use Master File Tables to store resident attributes for each computer file, including the filename, data, times of creation/modification or access and the user who last created/modified/accessed said file.

Appeal Brief

Beldock stores data in a database; thus, using Master File Tables would provide means of tracking activity by users to track the integrity of data using audit trails. Furthermore, it has been admitted as prior art, as a result of untimely and/or improperly challenged Official Notice, that it is old and well known in the computing arts to create audit trails of data usage within the system, especially within databases. Audit trail techniques contribute to data integrity because it is desirable to have a past record of events where the sequence of events can be traced. Audit trails are helpful in investigations to verify the status of something or to determine where or when unauthorized activities took place. Sometimes, those who are authorized to access data abuse that right by using it for unauthorized purposes. Audit trails make it possible to discover the offender. The audit trail can be closely monitored for any unusual activity. An audit trail is a chronological record of events that occurred in the system, and enables users to retrace the steps through the system and reconstruct the sequence of events that occurred. Audit trails store information that attribute files to an author (or modifying user) and timestamp said file (upon creation and modification).

Furthermore, it was known at the time of the invention that merely providing an automated way to replace a well-known activity which accomplishes the same result is not sufficient to distinguish over the prior art. In re Venner, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958). Furthermore, it is well settled that it is not to broadly provide a mechanical or automatic means to replace manual activity which has accomplished the same result. In re Venner, 120 USPQ 192.

Appeal Brief

Thus, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the teachings of Beldock to implement audit trail measures known in the art in order to obtain the additional benefits of providing a historical record of events that enable users to determine the abusive actions and identifies of (authorized and unauthorized) users, as described above, providing a sense of accountability and responsibility amongst users.

Beldock does not explicitly teach:

a processor;

a data storage device operably connected to the processor, said data storage device further comprising a number of individual storage units for storing a predetermined type of data; and

system accepting a plurality of forms from a plurality of sites at specific times by said predetermined schedule, each of said forms including instructions, definitions, and performance information according to uniform data definitions.

However, Beldock teaches the use of a database (database 12) to store data. The use of a database inherently requires the use of computing devices (which include a processor) and databases are operably connected to computing devices; thus Beldock meets the limitations of the claim.

Beldock collects performance information from a plurality of facilities to assess program compliance with predefined criteria based on a function of performance at a plurality of facilities (the program requires that 4 profitable environmental measures are presently implemented at least one facility, 4 profitable environmental measures are

Appeal Brief

implemented in at least one facility, or a combination, and that said profitable environmental measures are implemented in 75% of all facilities within 3 years of initial certification in order to maintain certification) [Column 4, line 4- Column 5, line 53]. The environmental certification program taught by Beldock also teaches the step of obtaining certification compliance data after assessment (at specific time) of each year's predetermined certification conditions for compliance (as determined by a set of predetermined certification criteria for each year) [Column 5, lines 55-63]. The Beldock system also obtains a bill of materials (a definition) comprising the chemical components of chemical products to be manufactured that can be compared to a "recipe" used to manufacture the chemical product, which is then compared to a stored set of government regulatory standards (uniform data definitions) governing the manufacturing location for the manufactured chemical product [Column 1, lines 56-59, Column 2, lines 45-54]. The Beldock system also teaches the steps of proposing (or defining) modifications to noncomplying chemical products (so that the chemical product to be manufactured is in compliance), and suggesting (or defining) substitutions for components in mixtures [Column 2, lines 60-65].

While Beldock teaches the step of collecting performance information data from a plurality of sites, Beldock is silent regarding the use of forms. However, it is old and well known in the art that forms are used in transmitting data (such as Electronic Data Interchange, survey results, questionnaires, etc.). Beldock tracks the compliance of a participant in the environmental certification program and also conducts on-site verification of compliance [Column 2, lines 21-23, Column 3, lines 55-57]; thus, using

Appeal Brief

forms to enter data would provide a uniform data set for each participant, easing the burden of data processing and further enabling utilization of the Beldock system on a global scale. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the teachings of Beldock to accept performance ‘information in forms, to enable the use of data transfer means such as Electronic Data Interchange, and standardize the presentation of data on said forms (to include pre-filled data such as company name, address, etc.), which would enable the automated processing of information on the forms.

Beldock does not explicitly teach said modifying of said performance occurring in real time. However, Official Notice is taken that real-time updating is old and well known in the art. Beldock teaches that participants are given a short period of time in which to correct any inadvertent defects in its compliance [Column 5, line 65 — Column 6, line 19]; thus, modifying performance in real time would facilitate the changes needed to correct all aspects in which the participant is in non-compliance, thereby making the participant eligible to use the certification mark again. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the teachings of Beldock to modify performance in real time, because doing so would allow participants to continuously monitor performance and implement corrective measures in order to be in compliance with predefined criteria and retain eligibility to display said certification mark. The eligibility to display certification marks and be in compliance with predefined criteria has been identified by Beldock as being beneficial and a goal of participants, as Beldock explains that companies vie for environmental awards given by

Appeal Brief

the government for the prestige associated with such awards, perceived economic value, and public awareness and that the certification mark provided by the program has discernable value in the marketplace, signifying the participant's dedication to environmental concerns and the willingness to be a model environmental citizen. [Column 1, lines 32-52].

As per claim 38, Beldock teaches computer executable process steps operative to control a computer, stored on a computer readable medium, for monitoring performance information comprising the steps of:

storing said performance information in a database (compliance data into database 12) according to an area of interest of said performance information [Column 3, lines 56-57, Column 4, lines 41-43, Column 5, lines 55-57, Claims 1c, 15c];

monitoring said performance information at said specific times by said predetermine schedule currently stored for conformance against pre-established performance criteria (evaluate and track the compliance of a participant; program defines the criteria which must be met by a participant in the program in order to be in compliance; the participant must implement (and maintain) a predefined number of additional PEMs at specified years after certification in order to maintain certification; (participant is evaluated at year 0, year 1, year 2, year 3, year 4, and year $(4+2n)$)) [Column 3, lines 28-30, 56-57, 60-65, Column 4, lines 7-9, Figure 3, Claims 1a, 15a];

flagging said performance information that does not conform with said performance criteria (recording a non-compliance in the database) and generating a report one of automatically and manually according to at least a portion of said performance

Appeal Brief

information currently stored (system outputs at 18 whether the participant is in compliance and therefore certified or outputs at 20 whether the participant is not in compliance and is therefore not certified) [Column 3, lines 56- 57, 60-66, Claims if, 15t]; providing notification (system outputs at 18 whether the participant is in compliance and therefore certified or outputs at 20 whether the participant is not in compliance and is therefore not certified) when the performance information deviates from the performance criteria (identified profitable environmental measure are reported to the organizers of the environmental certification program and input into the database 12; participant reports its compliance (or non-compliance} with the program to the organizers of the program) [Column 3, lines 59-66, Column 4, lines 40-43, Column 5, lines 55-57]; modifying said performance so that said performance conforms with said performance criteria (participants are given a short period of time in which to correct any inadvertent defects in its compliance) [Column 6, lines 4-6]; and wherein said modifying said performance is conducted immediately subsequent to said providing notification when said performance information' deviates from said performance criteria (the participant is apprised of its failure to comply with particular requirements, which are allowed to be remedied during the brief grace period} [Column 5, line 64— Column 6, line 9].

Beldock does not explicitly teach that performance criteria is set at one of a global, a regional, and a site-specific level. However, it has been admitted as prior art, as a result of untimely and/or improperly challenged Official Notice, that it is old and well known in the art to for compliance data to be updated to reflect changes in federal,

Appeal Brief

state, and local laws and regulations, program requirements of federal and state-funded programs, and industry standards (such as ISO certification, Quality Control Initiatives, etc.), as well as self-imposed rules and regulations, thereby meeting the limitation of the claim.

Beldock does not explicitly teach:

(i) automatically creating an audit trail to said forms, wherein said audit trail comprises: a name of an author, a creation date, a name of a modifying user, and a date of modification

However, It has been admitted as prior art, as a result of untimely and/or improperly challenged Official Notice, that it is old and well known in the computing arts that computer operating systems, use Master File Tables to store resident attributes for each computer file, including the filename, data, times of creation/modification or access and the user who last created/modified/accessed said file.

Beldock stores data in a database; thus, using Master File Tables would provide means of tracking activity by users to track the integrity of data using audit trails.

Furthermore, it has been admitted as prior art, as a result of untimely and/or improperly challenged Official Notice, that it is old and well known in the computing arts to create audit trails of data usage within the system, especially within databases. Audit trail techniques contribute to data integrity because it is desirable to have a past record of events where the sequence of events can be traced. Audit trails are helpful in investigations to verify the status of something or to determine where or when unauthorized activities took place. Sometimes, those who are authorized to access data

Appeal Brief

abuse that right by using it for unauthorized purposes. Audit trails make it possible to discover the offender. The audit trail can be closely monitored for any unusual activity. An audit trail is a chronological record of events that occurred in the system, and enables users to retrace the steps through the system and reconstruct the sequence of events that occurred. Audit trails store information that attribute files to an author (or modifying user) and timestamp said file (upon creation and modification).

Furthermore, it was known at the time of the invention that merely providing an automated way to replace a well-known activity which accomplishes the same result is not sufficient to distinguish over the prior art. In re Venner, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958). Furthermore, it is well settled that it is not “invention” to broadly provide a mechanical or automatic means to replace manual activity which has accomplished the same result. In re Venner, 120 USPQ 192.

Thus, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the teachings of Beldock to implement audit trail measures known in the art in order to obtain the additional benefits of providing a historical record of events that enable users to determine the abusive actions and identifies of (authorized and unauthorized) users, as described above, providing a sense of accountability and responsibility amongst users.

Beldock does not explicitly teach:

(b) system accepting a plurality of forms from a plurality of sites, each of the forms including performance information as a function of uniform data definitions.

Appeal Brief

Beldock collects performance information from a plurality of facilities to assess program compliance with predefined criteria based on a function of performance at a plurality of facilities (the program requires that 4 profitable environmental measures are presently implemented at least one facility, 4 profitable environmental measures are implemented in at least one facility, or a combination, and that said profitable environmental measures are implemented in 75% of all facilities within 3 years of initial certification in order to maintain certification) [Column 4, line 4- Column 5, line 53].

While Beldock teaches the step of collecting performance information data from a plurality of sites, Beldock is silent regarding the use of forms. However, it is old and well known in the art that forms are used in transmitting data (such as Electronic Data Interchange, survey results, questionnaires, etc.). Beldock tracks the compliance of a participant in the environmental certification program and also conducts on-site verification of compliance [Column 2; lines 2 1-23, Column 3, lines 55-57]; thus, using forms to enter data would provide a uniform data set for each participant, easing the burden of data processing and further enabling utilization of the Beldock system on a global scale. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the teachings of Beldock to accept performance information in forms, to enable the use of data transfer means such as Electronic Data Interchange, and standardize the presentation of data on said forms (to include pre-filled data such as company name, address, etc.), which would enable the automated processing of information on the forms.

Appeal Brief

Beldock does not explicitly teach said modifying of said performance occurring in real time. However, Official Notice is taken that real-time updating is old and well known in the art. Beldock teaches that participants are given a short period of time in which to correct any inadvertent defects in its compliance [Column 5, line 65 — Column 6, line 19]; thus, modifying performance in real time would facilitate the changes needed to correct all aspects in which the participant is in non-compliance, thereby making the participant eligible to use the certification mark again. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the teachings of Beldock to modify performance in real time, because doing so would allow participants to continuously monitor performance and implement corrective measures in order to be in compliance with predefined criteria and retain eligibility to display said certification mark. The eligibility to display certification marks and be in compliance with predefined criteria has been identified by Beldock as being beneficial and a goal of participants, as Beldock explains that companies vie for environmental awards given by the government for the prestige associated with such awards, perceived economic value, and public awareness and that the certification mark provided by the program has discernable value in the marketplace, signifying the participant's dedication to environmental concerns and the willingness to 'be a model environmental citizen; [Column 1, lines 32-52].

Claims 20-24, 28-32, 34, 36, 39-43, 46-50, 52 and 54 repeat the limitations of claims 2-6, 9-13 and 15,17 respectively; therefore, the same rejection applies.

2. Appellants' Position

a. Independent Claims 1, 19, and 38

Appellants traverse the rejections because, among other reasons, Beldock teaches against the claimed feature “wherein said modifying said performance is conducted immediately subsequent to said providing notification when said performance information deviates from said performance criteria so that said modifying of said performance occurs in real time” (independent claims 1, 19, and 38). More specifically, because Beldock teaches that participants are given “a short period of time” in which to correct any inadvertent defects in its compliance, performance modification is not conducted “immediately subsequent” to notification so that the modification “occurs in real time”. In other words, if a modification is performed a short period of time after a notification, then the “short period of time” is an intermediate action between notification and modification, such that the modification is not performed “immediately subsequent” to the notification. When a reference teaches away from an invention, this tends to show that one ordinarily skilled in the art would not have made reference to the reference. Therefore, Beldock would not be referred to illustrate the claimed features “wherein said modifying said performance is conducted immediately subsequent to said providing notification when said performance information deviates from said performance criteria so that said modifying of said performance occurs in real time” (independent claims 1, 19, and 38).

Appeal Brief

The Examiner argues that “the performance modification occurs immediately after the notification in the Beldock system” (Advisory Action, p. 2, para. 3). However, the Examiner does not provide any support within Beldock to maintain this assertion. Instead, the Examiner acknowledges that Beldock discloses that a “short period of time” is given to correct defects in compliance (Advisory Action, p. 2, para. 3).

Appellants respectfully submit that giving participants a “short period of time” to correct defects teaches away from modifying performance “immediately subsequent” to notification of such defects so that the modifying “occurs in real time”. In other words, if action B is performed a short period of time after action A, then the “short period of time” is intermediate action A and action B, such that action B is not performed “immediately subsequent” to action A.

To the contrary, as described in paragraph 0010 of Appellants’ disclosure, the performance indicator and notification system (PINS) provides a mechanism for assessing environmental performance on a real-time basis and allowing immediate notification to corporate staff or other environmental professionals when performance data deviates from the established criteria. As further described in paragraph 0042 of Appellants’ disclosure, PINS provides real-time analysis of performance data, as opposed to a retrospective view on performance passed the elapsed measurement period so that comprehensive company-wide monitoring of performance is accomplished in a manner such that data entered in a single site is accessible, in real-time, at other sites to perform thresholding on limits set at multiple sites, all sites, or just the local site. PINS makes the entire process of performance tracking against criteria systematic, timely and efficient;

Appeal Brief

and turns lagging indicators into leading indicators by way of providing real-time performance feedback.

Accordingly, Appellants submit that Beldock teaches away from modifying performance immediately subsequent to the notification so that the modifying occurs in real time. Instead, Beldock discloses that participants are given an intermediary short period of time in which to correct any inadvertent defects in its compliance. Therefore, it is Appellants' position that Beldock teaches away from the claimed feature "wherein said modifying said performance is conducted immediately subsequent to said providing notification when said performance information deviates from said performance criteria so that said modifying of said performance occurs in real time" as defined by independent claims 1, 19, and 38.

In addition, Appellants submit that because Beldock teaches an environmental certification program that provides a "uniform criteria" for participants in the program, Beldock teaches against the claimed features "wherein said performance criteria is set at one of a global, a regional, and a site-specific level" as defined by independent claims 1, 19, and 38.

As described in the abstract and column 6, lines 10-19 of Beldock, the data processing method for an environmental certification program provides "uniform criteria" for participants in the program. As such, the certification mark provided by the program to a complying participant has discernable value in the marketplace. In addition, the continued display of the certification mark by a participant on its goods and in its advertising signifies the participant's dedication to environmental concerns and the

Appeal Brief

willingness of the participant to act to be a model environmental citizen.

Conversely, as discussed in paragraph 0035 of Appellants' disclosure, performance data criteria may be set at a global, regional or site level. This flexible system for setting performance levels allows for site-specific criteria to be set for a facility while corporate-wide criteria to be set for goals affecting all or some locations.

Accordingly, Appellants submit that Beldock teaches setting "uniform" performance criteria; and as such, Beldock teaches against setting the performance criteria to global, regional, or site-specific levels. Specifically, if the performance criteria of Beldock is uniformly set for all of the participants, then the performance criteria cannot be set at the regional level. The criteria must be the same (uniform) for all of the regions. For example, if an environmental criteria (e.g., the maximum amount of greenhouse gas emissions allowed) is uniformly set across the nation, then the criteria must be the same for highly populated regions (e.g., New York City) and sparsely populated regions (e.g., Northern Alaska). Thus, a "uniform" performance criteria does not allow performance criteria to be set at the regional level.

Therefore, it is Appellants' position that Beldock teaches away from the claimed features "wherein said performance criteria is set at one of a global, a regional, and a site-specific level" as defined by independent claims 1, 19, and 38. In view the foregoing, the Board is respectfully requested to reconsider and withdraw this rejection.

b. Dependent Claims 2, 20, and 39

As described above, Beldock teaches setting “uniform” performance criteria. Therefore, Appellants submit that Beldock teaches against the claimed features wherein said monitoring further comprises monitoring said performance information currently stored of a specific set of said plurality of sites for conformance with site-specific performance criteria (dependent claims 2, 20, and 39). More specifically, if a uniform criteria is imposed upon all of the sites, then Beldock teaches against the claimed “site-specific performance criteria”. In other words, the criteria is not “site-specific” if it must be the same (uniform) as other sites. In view the foregoing, the Board is respectfully requested to reconsider and withdraw this rejection.

c. Dependent Claims 3, 21, and 40

As described above, Beldock teaches setting “uniform” performance criteria. Therefore, Appellants submit that Beldock teaches against the claimed features wherein said specific set of sites is a single site and said site-specific performance criteria comprises said performance criteria for said single site (dependent claims 3, 21, and 40). More specifically, if a uniform criteria is imposed upon all of the sites, then Beldock teaches against the claimed “site-specific performance criteria”. In other words, the criteria is not “site-specific” if it must be the same (uniform) as other sites. In view the foregoing, the Board is respectfully requested to reconsider and withdraw this rejection.

d. Dependent Claims 4, 22, and 41

As described above, Beldock teaches setting “uniform” performance criteria. Therefore, Appellants submit that Beldock teaches against the claimed features wherein said specific set of sites comprises multiple sites and said site-specific performance criteria comprises said performance criteria for the multiple sites (dependent claims 4, 22, and 41). More specifically, if a uniform criteria is imposed upon all of the sites, then Beldock teaches against the claimed “site-specific performance criteria”. In other words, the criteria is not “site-specific” if it must be the same (uniform) as other sites. In view the foregoing, the Board is respectfully requested to reconsider and withdraw this rejection.

e. Dependent Claims 5, 23, and 42

As described above, Beldock teaches setting “uniform” performance criteria. Therefore, Appellants submit that Beldock teaches against the claimed features wherein said set of specific sites comprises all said plurality of sites and the site-specific performance criteria comprises said performance criteria for all said plurality of sites (dependent claims 5, 23, and 42). More specifically, if a uniform criteria is imposed upon all of the sites, then Beldock teaches against the claimed “site-specific performance criteria”. In other words, the criteria is not “site-specific” if it must be the same (uniform) as other sites. In view the foregoing, the Board is respectfully requested to reconsider and withdraw this rejection.

f. Dependent Claims 6, 9-13, 15, 17, 24, 28-32, 34, 36, 43, 46-50, 52, and 54

It is Appellants' position that Beldock does not teach the features defined in independent claims 1, 19, and 38 and similarly does not teach the features defined in dependent claims 6, 9-13, 15, 17, 24, 28-32, 34, 36, 43, 46-50, 52, and 54. In view the foregoing, the Board is respectfully requested to reconsider and withdraw this rejection.

B. The Rejection Based on Beldock and Petke

1. The Position in the Office Action

The Office Action states:

Claims 7, 18, 25, 37, 44 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beldock (U.S Patent #6,490, 565) as applied to claims 1, 19, and 38 above, and further in view of Petke et al (U.S Patent #6,163,732).

As per claim 7, although not explicitly taught by Beldock, Petke et al. teaches said providing notification further comprises (automatically) notifying an environmental professional (notifying a governmental authority) [Claim 31].

Beldock is directed to defining compliance criteria and recording an organization's compliance (or non-compliance) with said criteria. Petke et al. is directed to determining the compliance of chemical products to government regulations. Thus, both Beldock and Petke et al. are both directed to the analogous art of determining an organization's compliance to specific criteria.

Appeal Brief

Beldock stores compliance data in a database, which is used to evaluate the participant's compliance and determine whether the participant retains the privilege of displaying a certification mark in conjunction with its goods and advertisements; thus, notifying environmental professionals of performance would enable compliant participants to be recognized as environmentally responsible, making the public aware of the participant's accomplishments. Beldock explains that companies vie for environmental awards given by the government for the prestige associated with such awards, perceived economic value, and public awareness and that the certification mark provided by the program has discernable value in the marketplace, signifying the participant's dedication to environmental concerns and the willingness to be a model environmental citizen [Column 1, lines 32-52, Column 6, lines 10-19].

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the teachings of Beldock to notify an environmental professional in order to quickly obtain remedies to problems, misconduct or wrong doings that resulted in a failure to comply with predetermined compliance criteria (also providing the benefit of minimizing adverse consequences), and to disseminate a positive, law-abiding corporate value, creating an atmosphere that discourages wrongdoing.

As per claim 18, Beldock does not explicitly teach that said creating step further comprises sorting by a specific chemical.

However, it has been admitted as prior art, as a result of untimely and/or improperly challenged Official Notice, that it is old and well known in the computing and

Appeal Brief

database arts that database queries select records from one or more tables in a database according to a set of input parameters so that they can be viewed, sorted, analyzed, on a common datasheet. Furthermore, there are a plurality of rules, regulations, and laws governing the usage of chemicals and the composition of chemical products. The compositional information is reviewed periodically for opportunities to change to processes that are more environmentally friendly.

For chemical compounds or compositions, Petke et al. teaches the analysis of: activity, and distribution (manufacturers must notify the EPA each time it samples or sells any of certain listed chemicals into another country for the first time; the DEA requires a manufacturer to notify them of potential new customers for certain chemicals; the Chemical Warfare Convention limits the sale of certain chemicals; the sale of any chemical to one or more specific customer may be limited) [Column 22, lines 1-3, 33-57]; and disposition and decomposition (chemical compositions present in chemical products may be ascertained by obtaining a bill of materials comprising the chemical components of the chemical product to be manufactured) [Column 1, lines 56-59, Column 13, lines 7-Column 21, line 10]

Beldock is directed to defining compliance criteria and recording an organization's compliance (or non-compliance) with said criteria. Petke et al. is directed to determining the compliance of chemical products to government regulations. Thus, both Beldock and Petke et al. are both directed to the analogous art of determining an organization's compliance to specific criteria.

Appeal Brief

Beldock stores data in a database; thus, sorting data enables users to avoid inefficiently scanning large clusters of data to analyze data. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the teachings of Beldock to include the step of sorting data by chemical, in order to perform the analysis taught by Petke et al. in comparing chemical compositions to a stored set of government regulatory standards to determine compliance and assess a chemical's use rate and disposition for compliance with a plurality of regulations, rules, and laws.

Claims 25, 37, 44 and 55 repeat the limitations of claims 7 and 18 respectively; therefore, the same rejection applies.

2. Appellants' Position

a. Dependent Claims 7, 18, 25, 37, 44, and 55

It is Appellants' position that the proposed combination of Beldock and Petke does not render obvious independent claims 1, 19, and 38 and similarly does not render obvious dependent claims 7, 18, 25, 37, 44, and 55. In view the foregoing, the Board is respectfully requested to reconsider and withdraw this rejection.

C. The Rejection Based on Beldock and Barrett

1. The Position in the Office Action

The Office Action states:

Appeal Brief

Claims 8, 26, and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beldock as applied to claims 1,19, and 38 above, and further in view of Barrett et al. (U.S Patent #6,029,144).

As per claim 8, although not explicitly taught by Beldock, Barrett et al. teaches: reviewing data in the, database for nonconformance with said modified performance criteria (checking entries against each relevant rule in the rules database 402) [Column 7, lines 41-48, Claims 1, 13a & 13b]; and providing notification of nonconformance with said modified performance criteria (log the rule violation and send; along with a recommendation for action, to the auditor system) [Column 8, lines 58-60, Claims 1, 1 3b & 1 3c].

Beldock is directed to defining compliance criteria and recording an organization's compliance (or non-compliance) with said criteria. Barrett et al. is directed to checking entries for compliance with policy rules. Thus, both Beldock and Barrett et al. are directed to the analogous art of checking an organization's compliance with rules and criteria.

Beldock stores compliance data in a database, which is used to evaluate the participant's compliance and determine whether the participant retains the privilege of displaying a certification mark in conjunction with its goods and advertisements; thus, notification of compliance performance would enable compliant participants to be recognized as environmentally responsible, making the public aware of the participant's accomplishments, and for noncompliant participants to be made aware of their inability to utilize said certification mark and make necessary corrections to inadvertent defects in

Appeal Brief

its compliance during the short grace period given to participants. Beldock explains that companies vie for environmental awards given by the government for the prestige associated with such awards, perceived economic value, and public awareness and that the certification mark provided by the program has discernable value in the marketplace, signifying the participant's dedication to environmental concerns and the willingness to be a model environmental citizen. Beldock also teaches that participants are given a short period of time in which to correct any inadvertent defects in its compliance [Column 1, lines 32-52, Column 5, line 65 — Column 6, line 19].

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the teachings of Beldock to include the steps of comparing data with compliance requirements, and providing notification of nonconformance with said compliance requirements, because it would provide a basis to benchmark existing programs, identify improvement opportunities and identify potential best practices, and help a business focus on developing and delivering near-perfect products and services, while improving customer satisfaction, and providing an up-to-date assessment (and compliance With all updated applicable rules, laws and regulations) of company practices, further enhancing shareholder values while reducing potential risks to the business.

Although the combined teachings of Beldock and Barrett et al. do not explicitly teach the step of modifying performance criteria, it has been admitted as prior art, as a result of untimely and/or improperly challenged Official Notice, that compliance criteria needs to be updated to reflect changes in federal, state, and local laws and regulations,

Appeal Brief

program requirements of federal and state-funded programs, and industry standards (such as ISO certification, Quality Control Initiatives, etc.), as well as self-imposed rules and regulations.

It would have been obvious to one of ordinary skill in the art at the time of invention to modify the teachings of Beldock et al to modify performance criteria, to provide accurate assessments of compliance with all current and valid limitations (as discussed above), as assessing compliance using outdated rules yields a useless result, which may result in undesirable consequences for a failure to comply.

Claims 26 and 45 repeat the limitations of claim 8 respectively; therefore, the same rejection applies.

2. Appellants' Position

a. Dependent Claims 8, 26, and 45

It is Appellants' position that the proposed combination of Beldock and Barrett does not render obvious independent claims 1, 19, and 38 and similarly does not render obvious dependent claims 8, 26, and 45. In view the foregoing, the Board is respectfully requested to reconsider and withdraw this rejection.

D. The Rejection Based on Beldock and Smalley

1. The Position in the Office Action

The Office Action states:

Appeal Brief

Claims 14, 33, and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beldock (U.S Patent #6,490,565) as applied to claims 1, 19, and 38, above, and further in view of Smalley et al. (U.S Patent #6,067,549).

As per claim 14, although not explicitly taught by Beldock, Smalley et al. teaches generating a summary report (enforcement order report) at a pre-established review 'period, wherein said report comprises a comparison of said performance information to said performance criteria in the system (listing violations that need to be addressed, along with the amount of the penalty and corrective actions to be required) [Column 19, lines 30-47].

Beldock is directed to defining compliance criteria and recording an organization's compliance (or non-compliance) with said criteria. Smalley et al. is directed to managing information on regulated entities pertaining to environmental concerns in order to determine if any violations of regulatory requirements have been made. Thus, both Beldock and Smalley et al. are directed to the analogous' art of collecting information to determine if an organization is in compliance with requirements.

It would have been obvious to one of ordinary skill in the art at the time of invention to modify the teachings of Beldock to include the step of generating a summary report, because it would provide a basis to benchmark existing programs, identify improvement opportunities and identify potential best practices, help a business focus on developing and delivering near-perfect products and services, while improving customer satisfaction, ensuring that all activities are in compliance with all applicable rules, laws

Appeal Brief

and regulations, and further enhances shareholder values while reducing potential risks to the business.

Claims 33 and 51 repeat the limitations of claims 14 respectively; therefore, the same rejection applies.

2. Appellants' Position

a. Dependent Claims 14, 33, and 51

It is Appellants' position that the proposed combination of Beldock and Smalley does not render obvious independent claims 1, 19, and 38 and similarly does not render obvious dependent claims 14, 33, and 51. In view the foregoing, the Board is respectfully requested to reconsider and withdraw this rejection.

B. CONCLUSION

In view the forgoing, the Board is respectfully requested to reconsider and withdraw the rejections of claims 1-15, 17-26, 28-34, 36-52, and 54-55.

Please charge any deficiencies and credit any overpayments to Attorney's Deposit Account Number 50-0510.

Respectfully submitted,

Date: September 20, 2007
Gibb & Rahman, LLC
2568-A Riva Road, Suite 304
Annapolis, MD, 21401
(410) 573-6501
Customer No. 29154

/Duane N. Moore/
Duane N. Moore, Esq.
Registration No. 53,352

IX. CLAIMS APPENDIX

1. (Previously Presented) A method for monitoring environmental performance information and providing notification when said performance information indicates performance reaching a predetermined level, the method comprising the steps of:

setting performance criteria to capture performance information at specific times by a predetermined schedule in a system, wherein said performance criteria is set at one of a global, a regional, and a site-specific level;

accepting a plurality of forms from a plurality of sites at specific times by said predetermined schedule, each of said forms including instructions, definitions and said performance information according to uniform data definitions;

storing said performance information in a database according to an area of interest of said performance information;

monitoring said performance information for conformance with said performance criteria currently stored;

flagging said performance information that does not conform with said performance criteria and generating a report one of automatically and manually according to at least a portion of said performance information currently stored;

providing notification when said performance information deviates from said performance criteria;

Appeal Brief

modifying said performance so that said performance conforms with said performance criteria,

wherein said modifying said performance is conducted immediately subsequent to said providing notification when said performance information deviates from said performance criteria so that said modifying of said performance occurs in real time; and

automatically creating an audit trail to said forms, wherein said audit trail comprises: a name of an author; a creation date; a name of a modifying user; and, a date of modification.

2. (Previously Presented) The method of claim 1, wherein said monitoring further comprises monitoring said performance information currently stored of a specific set of said plurality of sites for conformance with site-specific performance criteria.
3. (Previously Presented) The method of claim 2, wherein said specific set of sites is a single site and said site-specific performance criteria comprises said performance criteria for said single site.
4. (Previously Presented) The method of claim 2, wherein said specific set of sites comprises multiple sites and said site-specific performance criteria comprises said performance criteria for the multiple sites.

Appeal Brief

5. (Previously Presented) The method of claim 2, wherein said set of specific sites comprises all said plurality of sites and the site-specific performance criteria comprises said performance criteria for all said plurality of sites.
6. (Previously Presented) The method of claim 1, wherein said providing notification further comprises sending notification via one or more of: e-mail; telephone; facsimile; pager; and, postal mail.
7. (Previously Presented) The method of claim 1, wherein said providing notification further comprises notifying an environmental professional.
8. (Previously Presented) The method of claim 1, further comprising steps of:
modifying performance criteria;
reviewing data in the database for nonconformance with said modified
performance criteria; and
providing notification of nonconformance with said modified performance
criteria.
9. (Previously Presented) The method of claim 1, wherein said areas of interest include one or more of: air; water; waste; energy; toxic chemical release inventory; containment; regulatory activity; cost and savings; facility general information; database

Appeal Brief

meta information; health and safety information; and, materials use and conservation information.

10. (Previously Presented) The method of claim 1, wherein said database is an Air Programs Database and said performance criteria is a high limit on emissions level.

11. (Previously Presented) The method of claim 1, wherein said database is a Waste Management Database and said performance criteria is a low limit on recycling quantities and low percentage rates of nonhazardous and hazardous waste.

12. (Previously Presented) The method of claim 1, wherein said database is an Energy Database and said performance criteria is a high limit on energy consumption.

13. (Previously Presented) The method of claim 1, wherein said database is a Cost and Savings Database and said performance criteria is a low limit on cost to savings ratio to ensure that economic efficiency does not fall below a predetermined level.

14. (Previously Presented) The method of claim 1, further comprising generating a summary report at a pre-established review period, wherein said report comprises a comparison of said performance information to said performance criteria in the system.

Appeal Brief

15. (Previously Presented) The method of claim 1, further comprising assigning a specific access level to a user, wherein the access level further comprises: reader; author; and, editor; wherein said reader is limited to viewing documents, author can view said documents, create said documents, and modify said documents created by said author, and the editor can read, create and modify all said documents.

16. (Cancelled).

17. (Previously Presented) The method of claim 1, further comprising creating queries to summarize data and produce useful management information.

18. (Previously Presented) The method of claim 17, wherein said creating step further comprises sorting by a specific chemical compound or composition to analyze activity, distribution, disposition, and decomposition across an operation.

19. (Previously Presented) A system for monitoring environmental performance information comprising:

a processor;

a data storage device operably connected to the processor, said data storage device further comprising a number of individual storage units for storing a predetermined type of data;

a program executable by the processor to:

Appeal Brief

accept a plurality of forms from a plurality of sites at specific times by said predetermined schedule, each of said forms including instructions, definitions and performance information according to uniform data definitions,

store said performance information in a database according to an area of interest of said performance information,

monitor said performance information at said specific times by said predetermined schedule currently stored for conformance against pre-established performance criteria, wherein said performance criteria is set at one of a global, a regional, and a site-specific level,

flag said performance information that does not conform with said performance criteria and generate a report one of automatically and manually according to at least a portion of said performance information in currently stored databases, and

provide notification when said performance information deviates from said performance criteria;

modify said performance so that said performance conforms with said performance criteria,

wherein modifying of said performance is conducted immediately subsequent to providing of said notification when said performance information deviates from said performance criteria so that said modifying of said performance occurs in real time; and

an automatically created audit trail for said forms, said audit trail comprising: a name of an author; a creation date; a name of a modifying user; and, a date of modification.

Appeal Brief

20. (Previously Presented) The system of claim 19, wherein said program is further executable to monitor said performance information currently stored of a specific set of sites for conformance with site-specific performance criteria.

21. (Previously Presented) The system of claim 20, wherein said specific set of sites comprises a single site and said site-specific performance criteria comprises said performance criteria for said single site.

22. (Previously Presented) The system of claim 20, wherein said specific set of sites comprises multiple sites and said site-specific criteria comprises the performance criteria for said plurality of sites.

23. (Previously Presented) The system of claim 20, wherein said set of said plurality of sites comprises all sites and said site-specific criteria comprises said performance criteria for the all said plurality of sites.

24. (Previously Presented) The system of claim 19, wherein said program is further executable to send notification via one or more of: e-mail; telephone; facsimile; pager; and, postal mail.

Appeal Brief

25. (Previously Presented) The system of claim 19, wherein said program is further executable to provide notification to an environmental professional.

26. (Previously Presented) The system of claim 19, wherein said program is further executable to: modify performance criteria;

review data in said database for nonconformance with said modified performance criteria; and

provide notification of nonconformance with the modified performance criteria.

27. (Cancelled).

28. (Previously Presented) The system of claim 19, wherein said areas of interest include one or more of: air; water; waste; energy; toxic chemical release inventory; containment; regulatory activity; cost and savings; facility general information; database meta information; health and safety information; and, materials use and conservation information.

29. (Previously Presented) The system of claim 19, wherein said database is an Air Programs Database and said performance criteria is a high limit on emissions level.

Appeal Brief

30. (Previously Presented) The system of claim 19, wherein said database is a Waste Management Database and said performance criteria is a low limit on recycling quantities and low percentage rates of nonhazardous and hazardous waste.

31. (Previously Presented) The system of claim 19, wherein said database is an Energy Database and performance criteria is a high limit on energy consumption.

32. (Previously Presented) The system of claim 19, wherein said database is a Cost and Savings Database and the performance criteria is a low limit on cost to savings ratio to ensure that economic efficiency does not fall below a predetermined level.

33. (Previously Presented) The system of claim 19, further comprising the step of generating a summary report at a pre-established review period, wherein said, report comprises a comparison of said performance information to said pre-established performance criteria.

34. (Previously Presented) The system of claim 19, further comprising a number of specific access levels for a user, said access levels further comprising: reader; author; and, editor; wherein said reader is limited to viewing documents, said author can view said documents, create said documents, and modify said documents created by said author, and said editor can read, create and modify all said documents.

Appeal Brief

35. (Cancelled).

36. (Previously Presented) The system of claim 19, further comprising queries to summarize data and produce useful management information.

37. (Previously Presented) The system of claim 36, wherein said queries further comprise sorting by a specific chemical compound or composition to analyze activity, distribution, disposition, and decomposition across an operation.

38. (Previously Presented) Computer executable process steps operative to control a computer, stored on a computer readable medium, for monitoring environmental performance information comprising the steps of:

accepting a plurality of forms from a plurality of sites at specific times by a predetermined schedule, each of said forms including instructions, definitions and performance information according to uniform data definitions;

storing said performance information in a database according to an area of interest of said performance information;

monitoring said performance information at said specific times by said predetermined schedule currently stored for conformance against pre-established performance criteria, wherein said performance criteria is set at one of a global, a regional, and a site-specific level;

Appeal Brief

flagging said performance information that does not conform with said performance criteria and generating a report one of automatically and manually according to at least a portion of said performance information in said plurality of databases;

providing notification when the performance information deviates from the performance criteria;

modifying said performance so that said performance conforms with said performance criteria,

wherein said modifying said performance is conducted immediately subsequent to said providing notification when said performance information deviates from said performance criteria so that said modifying of said performance occurs in real time; and

automatically creating an audit trail to said forms, wherein said audit trail comprises: a name of an author; a creation date; a name of a modifying user; and, a date of modification.

39. (Previously Presented) The computer executable process steps of claim 38, further comprising monitoring said currently stored performance information of a specific set of sites for conformance with site-specific performance criteria.

40. (Previously Presented) The computer executable process steps of claim 39, wherein said specific set of sites is a single site and said site-specific performance criteria comprises the performance criteria for said single site.

Appeal Brief

41. (Previously Presented) The computer executable process steps of claim 39 wherein the set of sites comprises multiple sites and said site-specific performance criteria comprises said performance criteria for said multiple sites.
42. (Previously Presented) The computer executable process steps of claim 39, wherein said specific set of sites comprises all of said plurality of sites and said site-specific criteria comprises said performance criteria for the all of said plurality of sites.
43. (Previously Presented) The computer executable process steps of claim 38, wherein said providing notification further comprises sending notification via one or more of: e-mail; telephone; facsimile; pager; and, postal mail.
44. (Previously Presented) The computer executable process steps of claim 38, wherein said providing notification further comprises providing notification to an environmental professional.
45. (Previously Presented) The computer executable process steps of claim 38, further comprising the steps of:
- modifying performance criteria;
 - reviewing data in said one or more databases for nonconformance with said modified performance criteria;

Appeal Brief

providing notification of nonconformance with said modified performance criteria.

46. (Previously Presented) The computer executable process steps of claim 38, wherein said areas of interest include one or more of: air; water; waste; energy; toxic chemical release inventory; containment; regulatory activity; cost and savings; facility general information; database meta information; health and safety information; and, materials use and conservation information.

47. (Previously Presented) The computer executable process steps of claim 38, wherein said database is an Air Programs Database and said performance criteria is a high limit on emissions level.

48. (Previously Presented) The computer executable process steps of claim 38, wherein said database is a Waste Management Database and said performance criteria is a low limit on recycling quantities and low percentage rates of nonhazardous and hazardous waste.

49. (Previously Presented) The computer executable process steps of claim 38, wherein said database is an Energy Database and said performance criteria is a high limit on energy consumption.

Appeal Brief

50. (Previously Presented) The computer executable process steps of claim 38, wherein said database is a Cost and Savings Database and said performance criteria is a low limit on cost to savings ratio to ensure that economic efficiency does not fall below a predetermined level.

51. (Previously Presented) The computer executable process steps of claim 38, further comprising the step of generating a summary report at a pre-established review period, wherein said report comprises a comparison of said performance information to said pre-established performance criteria.

52. (Previously Presented) The computer executable process steps of claim 38, further comprising assigning a specific access level to a user, said access level further comprising: reader; author; and, editor; wherein said reader is limited to viewing documents, said author can view said documents, create said documents, and modify said documents created by said author, and said editor can read, create and modify all said documents.

53. (Cancelled).

54. (Previously Presented) The computer executable process steps of claim 38, further comprising creating queries to summarize data and produce useful management information.

Appeal Brief

55. (Previously Presented) The computer executable process steps of claim 38, wherein said creating further comprises sorting by a specific chemical compound or composition to analyze activity, distribution, disposition, and decomposition across an operation.

Appeal Brief

X. EVIDENCE APPENDIX

There is no other evidence known to Appellants, Appellants' legal representative or Assignee which would directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

XI. RELATED PROCEEDINGS APPENDIX

There is no other related proceedings known to Appellants, Appellants' legal representative or Assignee which would directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.